

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BRANDON MAGYAR

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff

County of Residence of First Listed Defendant

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/21/12

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 22211 Woodside Dr., Bristol, IN 46507

Address of Defendant: 507 Phudential Rd., Horsham PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. § 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmer, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 06/21/12

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/21/12

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

BRANDON MAGYAR	:	CIVIL ACTION
	:	
v.	:	
	:	
NCO FINANCIAL SYSTEMS, INC.	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

06/20/2012
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Brandon Magyar
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

BRANDON MAGYAR,)
)
 Plaintiff)
)
 v.) **Case No.:**
)
) **COMPLAINT AND DEMAND FOR**
 NCO FINANCIAL SYSTEMS, INC.,) **JURY TRIAL**
)
 Defendant) **(Unlawful Debt Collection Practices)**

BRANDON MAGYAR (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC., (“Defendant”):

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Plaintiff is a natural person residing in Bristol, Indiana 46507.

1 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

2 7. Defendant is a national debt collection company with its corporate headquarters
3 located at 507 Prudential Road, Horsham, Pennsylvania 19044.

4 8. Defendant collects, and attempts to collect, consumer debts incurred, or alleged
5 to have been incurred, for personal, family or household purposes on behalf of creditors and
6 debt buyers using the U.S. Mail, telephone and/or internet.

7 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
8 and repeatedly contacted Plaintiff in an attempt to collect a debt.

9 10. Defendant acted through its agents, employees, officers, members, directors,
10 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11
12 **FACTUAL ALLEGATIONS**

13 11. At all relevant times, Defendant was attempting to collect an alleged consumer
14 debt.

15 12. The alleged debts at issue, a medical debt and car loan, arose out of transactions,
16 which were primarily for personal, family, or household purposes.

17 13. Beginning in or around August 2011, and continuing through April 30, 2012,
18 Defendant continuously and repetitively contacted Plaintiff on his home, cellular, and work
19 telephone numbers, seeking and demanding payment of \$16,800.00 for an alleged debt.

20 14. Plaintiff received collection calls from the following numbers: (888) 209-3124,
21 (866) 265-1913, and (877) 895-5703, which the undersigned has confirmed are telephone
22 numbers belonging to Defendant.

23 15. In the beginning, Defendant called Plaintiff’s cellular phone, on average, two (2)
24 to three (3) times a day, causing him to receive more than ten (10) collection calls a week.
25

1 16. On numerous occasions, Plaintiff spoke with Defendant's collectors, who
2 demanded that he make a payment on the alleged debts.

3 17. Each time, Plaintiff instructed Defendant stop contacting him.

4 18. Despite these instructions, Defendant continued to contact Plaintiff seeking and
5 demanding payment of the alleged debts.

6 19. Defendant was relentless in its attempts to collect the debt, and began calling his
7 home and work telephone numbers, when it was unable to contact Plaintiff on his cellular
8 telephone, having the intent to annoy, abuse and harass Plaintiff in its attempts to collect a debt.

9 20. Also, in conversations with Defendant's debt collectors, Plaintiff informed
10 Defendant that he could not afford to pay the debt and inquired about the possible repercussions
11 of not paying the alleged debt.

12 21. Defendant's collectors informed Plaintiff that the next step would be legal action
13 and wage garnishment if he did not pay the alleged debt.

14 22. Consequently, Plaintiff believed that he would be sued over this debt and/or that
15 his wages would be garnished

16 23. Upon information and belief, Defendant did not intend to take such actions at the
17 time it made these threats.

18 24. In addition, in its attempts to collect a debt, on numerous occasions, Defendant
19 contacted Plaintiff's parents.

20 25. Defendant left messages on Plaintiff's home answering machine, identifying
21 itself as a debt collector, stating that it was calling for Plaintiff, and requesting that Plaintiff call
22 it back.
23
24
25

1 26. Upon information and belief, at the time Defendant contacted Plaintiff's parents,
2 Defendant possessed valid contact information for Plaintiff.

3 27. Furthermore, when contacting Plaintiff's parents, Defendant did not have
4 permission from Plaintiff to disclose debt information to any third party, including his parents.

5 28. Defendant's actions in attempting to collect a debt were harassing, abusive, and
6 annoying.
7

8
9 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

10 **COUNT I**

11 29. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
12 §1692c(b).

13 a. A debt collector violates §1692c(b) of the FDCPA by communicating, in
14 connection with the collection of a debt, with a any person other than the
15 consumer, his attorney, a consumer reporting agency if otherwise permitted
16 by law, the creditor, the attorney of the creditor, or the attorney of the debt
17 collector, without the prior consumer of the consumer given directly to the
18 debt collector.

19 b. Here, Defendant violated §1692c(b) of the FDCPA when it communicated,
20 in connection with the collection of a debt, with a third party, Plaintiff's
21 parents, without having Plaintiff's express permission to do so.
22

23 **COUNT II**

24 30. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.
25 §§1692d and 1692d(5).

- 1 a. Section 1692d of the FDCPA prohibits a debt collector from engaging
2 in conduct the natural consequence of which is to harass, oppress, or
3 abuse any person in connection with the collection of a debt.
- 4 b. Section 1692d(5) of the FDCPA prohibits debt collectors from causing
5 a telephone to ring or engaging any person in telephone conversation
6 repeatedly or continuously with the intent to annoy, abuse, or harass
7 any person at the called number.
- 8 c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA by
9 calling Plaintiff's cellular, home and work telephones, on average, two
10 times a day, for almost two (2) months, with the intent to harass or
11 annoy Plaintiff.
- 12 d. Further, Defendant violated §1692d of the FDCPA by continuing to
13 call Plaintiff on his home and work telephone after having been
14 instructed by Plaintiff to stop calling, knowing that Plaintiff did not
15 want to receive collection calls.
16

17 COUNT III

18 31. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.
19 §§1692e, 1692e(4) and 1692e(5).

- 20 a. A debt collector violates §1692e of the FDCPA by using false,
21 deceptive or misleading representations or means in connection with
22 the collection of any debt.
- 23 b. A debt collector violates § 1692e(4) by making the representation or
24 implication that nonpayment of any debt will result in the arrest or
25

1 imprisonment of any person or the seizure, garnishment, attachment, or
2 sale of any property or wages of any person unless such action is lawful
3 and the debt collector or creditor intends to take such action.

4 c. A debt collector violates § 1692e(5) of the FDCPA by threatening to
5 take action that cannot legally be taken or that is not intended to be
6 taken.

7 d. Here, Defendant violated §§1692e, 1692e(4) and 1692e(5) of the
8 FDCPA when it threatened to take legal action against Plaintiff,
9 including garnishing his wages, even though it did not intend to take
10 such actions.

11 12 **COUNT IV**

13 32. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C.
14 §1692f.

15 a. A debt collector violates §1692f of the FDCPA by using unfair and
16 unconscionable means to collect or attempt to collect any debt.

17 b. Here, Defendant violated §1692f of the FDCPA engaging in other
18 unfair and unconscionable debt collection practices, including
19 repeatedly contacting third parties and revealing to these individuals
20 that Plaintiff owed a debt.

21
22 WHEREFORE, Plaintiff, BRANDON MAGYAR, respectfully prays for a judgment as
23 follows:

- 24 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
25 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
15 U.S.C. § 1692k(a)(2)(A);

- 1 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
2 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
3 d. Any other relief deemed appropriate by this Honorable Court.

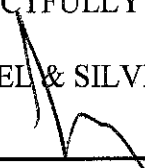
4 **DEMAND FOR JURY TRIAL**

5 PLEASE TAKE NOTICE that Plaintiff, BRANDON MAGYAR, demands a jury trial
6 in this case.

7
8 DATED: 06/21/12

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

9 By: 
10 CRAIG THOR KIMMEL
11 PA Attorney Id. No. 57100
12 30 E. Butler Pike
13 Ambler, PA 19002
14 Phone: (215) 540-8888 ext. 148
15 Fax: (877) 788-2864
16 Email: kimmel@creditlaw.com